

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**IN RE BAAN COMPANY SECURITIES
LITIGATION**

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) **Civil Action No. 98-2465(ESH)**
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MEMORANDUM OPINION

Plaintiffs' counsel has filed a motion [291-1] requesting the Court to delete paragraph 16 from its prior decision regarding attorneys' fees, or in the alternative, to modify this paragraph "to temper the language critical of plaintiffs' counsel." (Plaintiffs' Motion to Amend at 1.) While counsel is not requesting that the Court reconsider its decision to award fees in the amount of \$9.1 million (instead of the \$10.4 million that counsel had requested), counsel has asked the Court to eliminate or modify paragraph 16 because the "damage to counsel's professional reputations which would result from keeping these one and one-half pages intact would be unduly harsh." (*Id.*)

The Court will not delete paragraph 16 in its entirety. Under the law, the Court has discretion to determine an appropriate award of attorney's fees. In exercising its discretion, it is incumbent on the Court to explain its rationale for denying a fee request of 32% of the Settlement Fund. As recognized in the Court's Memorandum Opinion, counsel obtained an outstanding recovery for plaintiffs, but that is not the only factor to be considered in determining reasonable attorneys' fees. Furthermore, even if the Court's criticisms of counsel's performance have previously appeared in the public record, that does not support an argument that these criticisms cannot, or should not, be referenced by the Court when addressing counsel's request for \$10.4 million in fees.

This having been said, the Court believes that it is appropriate to modify some of the language in paragraph 16. First, the Court will delete the sentence that refers to the number of times that the Court was required to address the issue of lead plaintiffs and the matter of class certification, since it is true that the need for these successive motions cannot be attributed entirely to plaintiffs' counsel; rather, it also reflects the complexities and novelties associated with the Private Securities Litigation Reform Act ("PSLRA"). The Court will also delete the reference in paragraph 16 to Magistrate Judge Facciola's observations, since these remarks by this Court were made prior to its ruling on plaintiffs' objections to the Report, wherein the Court ultimately declined to adopt the Report. *See In re Baan Sec. Litig.*, 245 F. Supp. 2d 117, 125 n.2 (D.D.C. 2003). Finally, the Court will alter paragraph 16 to indicate that after it had issued its ruling in *Baan IV* on July 19, 2002, counsel's performance improved dramatically.^{1/}

While the Court has no desire or intent to inflict professional harm on counsel, it does not believe that any further modifications are warranted. Even if the delays attributable to counsel did not negatively impact the ultimate recovery, were not "borne of malice" or have already been documented in the public record (Pls.' Mot. at 7), these are not the only considerations that guide the Court's exercise of discretion in ruling on a fee petition. As counsel is aware, the PSLRA entrusts the courts with the job of awarding reasonable fees, and under the law, the skill and efficiency of the attorneys must be addressed. The Court therefore cannot, in good conscience, refrain from repeating the criticisms it voiced during the protracted course of this litigation.

Accordingly, for the foregoing reasons, the Court denies plaintiffs' motion to the extent

^{1/} The Court will also correct the typographical error in paragraph 16 and change the word "inexcusable" to "excusable" neglect.

that it seeks deletion of paragraph 16, but it will grant some of the modifications requested. A Modified Memorandum Opinion Regarding Award of Attorneys' Fees and Expenses is attached hereto and will replace the Memorandum Opinion previously issued on September 30, 2003.

ELLEN SEGAL HUVELLE
United States District Judge

Dated: